IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Bail Appl..No. 7451 of 2007()

CR.NO.38/07 OF NEYYATTINKARA EXCISE RANGE

: PETITIONER/ACCUSED:

VASANTHA, W/O. MADHAVA PANICKER,
ANITHA BHAVAN, VENNIYATTUKONAM, NARUVAMOODU,
PALLICHAL, THIRUVANANTHAPURAM.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7451 of 2007

Dated this the 5th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner, a woman, faces allegations under the Kerala Abkari Act. She was allegedly found to be in possession of 10 litres of arrack on 10.08.07. She was not arrested as the detecting party did not consist of any woman officials. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Her husband was taken into custody on 10.08.07 and he developed illness. He eventually breathed his last on 5.10.07. To cover up any possible allegations against the excise officials of responsibility for the death of her husband, a false case has been manufactured against the petitioner. Directions under Section 438 Cr.P.C may, in these circumstances, be issued, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that while it is true that against the husband of the petitioner, there are other crimes,

they have nothing to do with the detection of offence in the instant case. The petitioner may be directed to surrender before the learned Magistrate or the Investigating Officer and seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-